



INTERIOR BOARD OF INDIAN APPEALS

Johnelle Gullickson v. Acting Aberdeen Area Director, Bureau of Indian Affairs

26 IBIA 177 (08/11/1994)

Related Board case:
23 IBIA 196



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JOHNELLE GULLICKSON,	:	Order Affirming Decision as Modified
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-33-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 11, 1994

This is an appeal from an October 26, 1993, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), partially rescinding lease 1-2113.0-90-95 on the Standing Rock Sioux Reservation. The Area Director's decision was issued following the Board's remand in Twinn v. Aberdeen Area Director, 23 IBIA 196 (1993).

Lease 1-2113.0-90-95 was approved by the Acting Superintendent, Standing Rock Agency, BIA, for a term of five years, beginning November 1, 1990, and ending October 31, 1995. Appellant Johnelle (or Johnell) Gullickson is lessee. ^{1/} The lease covers Standing Rock Allotments 2113-A, T-2097, and T-2094-B. Allotments T-2097 and T-2094-B are owned by the Standing Rock Sioux Tribe (Tribe). At the time the lease was approved, the Tribe also owned an undivided one-half interest in Allotment 2113-A; the remaining one-half interest in Allotment 2113-A was shared by several individuals.

Lease 1-2113.0-90-95 was signed on behalf of the Tribe by the Tribal Chairman. None of the individual landowners signed the lease. However, the purported signatures of two of the individual landowners, Henrietta Twinn Kidder Iron Shield and Pernell Thomas Kidder, were placed on a document attached to the lease. These two signatures were the subject of the dispute in Twinn.

On March 24, 1992, Walter Twinn, owner of a 1/16 interest in Allotment 2113-A, wrote to the Superintendent, requesting that the lease be rescinded because it has not been "legally signed" by any of the individual landowners. The Superintendent denied Twinn's request. Twinn appealed to the Area Director, contending that the signatures of Iron Shield and Kidder had been forged by appellant. The Area Director affirmed the Superintendent's decision, and Twinn appealed to the Board. On February 12, 1993, the Board vacated the Area Director's decision and remanded the matter to him for further investigation of the forgery allegation and issuance of a new decision.

^{1/} In her appeal documents, appellant spells her first name variously, sometimes with, and sometimes without, a final "e."

On March 16, 1993, the Area Director issued a decision holding that the document on which the disputed signatures of Iron Shield and Kidder appeared was not a part of the lease contract. 2/ The decision concluded:

[W]e are hereby reversing our decision and rescinding approval on that portion of the lease #1-2113.0-90-95 described as the SE ¼ Sec. 32, T. 133 N., R. 79 W.

It will be necessary for the lessee to obtain the lessors' consents on the lease contract itself or the Agency's authorized consent to lease forms and [to have the signatures] properly witnessed.

Appellant filed a notice of appeal with the Area Director. The Area Director construed appellant's filing as a request for reconsideration. On March 29, 1993, he withdrew his decision and stated that an informal hearing would be conducted, as suggested in the Board's decision in Twinn. He appointed the Superintendent of the Yankton Agency, BIA, as Hearing Officer.

The hearing was held on October 14, 1993. The Hearing Officer's report, dated October 20, 1993, stated in part:

From the testimony it appears that Johnelle Gullickson did make a good faith effort to contact the owners in order to obtain a lease contract. Pendell Kidder and Henrietta Iron Shield acknowledge that they did receive a visit from Johnelle Gullickson and Kay Gullickson regarding land matters but dispute that they signed a lease. I could not conclusively obtain evidence that they did or did not sign a lease.

* * * * *

I could not conclude that Pernell Kidder or Henrietta Iron Shield consented to the lease. Since only 50 percent consent was obtained and not a majority as required by regulation in allotment no. 2113, I am recommending that the SE1/4 of Section 32 T.133-R.79 be rescinded from the lease. [3/]

2/ The document on which the signatures appear is entitled "Individual or Tribal ownership and shares" and is a list of individual landowners. In his Mar. 16, 1993, decision, the Area Director stated that he had originally considered this document to be a part of the lease contract but had since concluded that it was not.

3/ It is not clear from the record which regulatory authority the Superintendent intended to invoke in granting and/or approving the lease. See, e.g., 25 CFR 162.2(a)(4), 25 CFR 162.6(b). For purposes of this decision, the Board assumes that the Superintendent had authority to grant the lease on behalf of the individual landowners other than Iron Shield and Kidder, but did not have authority to grant the lease without the signatures of those two individuals.

The Hearing Officer's report also noted several changes in the ownership of Allotment 2113-A. It stated that, in August 1992, the allotment had been partitioned, so that the Tribe now owned the north half, while individual landowners shared ownership of the south half. The report further stated that Twinn, Iron Shield, and Kidder had all sold their interests in Allotment 2113-A.

On October 26, 1993, the Area Director issued a decision accepting the Hearing Officer's recommendation and reinstating his own March 16, 1993, decision rescinding a portion of the lease.

On appeal to the Board, appellant contends that she did not forge the signatures of Iron Shield and Kidder. She also states that she believes that Twinn's appeal and the statements of Iron Shield and Kidder were generated by the individual who purchased their interests.

The Board must first consider whether this appeal is affected by the fact that the landowners involved in Twinn no longer own any interests in the allotment.

The Hearing Officer stated that Twinn sold his interest on September 17, 1992. Thus it appears that Twinn sold his interest only a month after he filed his notice of appeal with the Board. Twinn did not inform the Board that he had sold his interest. BIA likewise failed to inform the Board of the sale. The Board therefore issued its decision in the belief that Twinn was a proper appellant. It is at least arguable that Twinn lost his standing when he sold his interest and that his appeal should have been dismissed at that time. It is also arguable that the Board's decision in Twinn ought now to be withdrawn as having been issued under a mistake of fact as to Winn's standing. In light of the extensive proceedings which have followed the Board's decision in Twinn, however, the Board concludes that, even assuming it has authority to withdraw its decision in that case, it should not do so.

Iron Shield and Kidder have also sold their interests. In their case, however, the sales make no difference to this appeal. There is no doubt that they were landowners in 1990, when they were purported to have signed the lease.

The Hearing Officer stated that he "could not conclude" that Iron Shield and Kidder consented to the lease. The evidence before him was conflicting. Gullickson and two witnesses stated that Iron Shield and Kidder signed the lease. Iron Shield and Kidder stated that they did not sign it.

As indicated above, the disputed signatures do not appear either on the lease itself or on consent forms, but on a list of landowners. Nothing on the list of landowners indicates that, by signing it, a landowner gave his/her consent to a lease. Therefore, even assuming Iron Shield and Kidder signed the landowners' list, the signatures are not persuasive evidence of their consent to a lease.

The fact that their signatures do not appear on the lease itself, or on any document designated as a consent form, bolsters the testimony of Iron Shield and Kidder that they did not consent to the lease. The Board finds that the weight of the evidence supports a conclusion that Iron Shield and Kidder did not consent to the lease.

The Area Director concluded that lease 1-2113.0-90-95 should be rescinded with respect to all of allotment 2113-A as it existed in 1990. His decision would leave the lease in effect as to the two allotments owned entirely by the Tribe.

As noted above, allotment 2113-A has now been partitioned between the Tribe and the individual landowners. Because the Tribe consented to the lease, the Board sees no reason why the lease should not remain in effect as to the Tribe's half of allotment 2113-A, as well as to the Tribe's other two allotments.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 26, 1993, decision is affirmed as modified to state that lease 1-2113.0-90-95 is rescinded only with respect to the south half of allotment 2113-A, now owned by individual landowners.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

4/ The Board suggests that the rescission be made effective at the end of this lease year, i.e., October 31, 1994.